IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 85 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MAHENDRAKUMAR LAXMIDAS GHADADA

Versus

NARMADABEN LAXMIDAS GHADADA

Appearance:

1. Appeal from Order No. 85 of 1996

MR RM CHHAYA for Petitioner No. 1

..... for Petitioner No. 2-3

MR HM PRACHCHHAK for Respondent No. 1

MR MD PANDYA for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 18/09/2001

ORAL JUDGEMENT

1. The appellants are the real sons of respondent No.1 Narmadaben. They have challenged in this Appeal the

impugned order dated 6.1.1996 passed by the learned Civil Judge (SD), Veraval below Ex.5 whereby the learned Judge made the ex-parte ad.interim injunction granted in favour of the respondent plaintiff absolute.

2. Along with this Appeal Civil Application No.1765 of 1996 was filed. When it had come up for admission on 19.7.1996 learned Counsel Shri Chhaya appearing for the appellants stated at the bar that the Appellants will hire a house for their mother - respondent No.1 on or before 22.7.1996 within the limits of Veraval-Patan Joint Municipality and they will pay the rent for it to the landlord of their mother. Mr.Chhaya further stated that all the appellants will pay the amount of maintenance at the rate of Rs.250/- p.m. to their mother - respondent No.1 till the final disposal of the main Civil Suit. By way of ad.interim order my learned Brother K.R.Vyas, J. directed the appellants to comply with the statement made by their Counsel Shri Chhaya on their behalf.

3. Considering the peculiar facts and circumstances of the case learned Counsel Shri Chhaya for the appellants left it to the Court for passing appropriate order in this Appeal. While doing so, he pointed out that the Appellant No.1 Mahendrabhai Laxmidas had died during pendency of this Appeal. He only submitted that while disposing of this Appeal the trial Court be directed to dispose of the Suit itself as early as possible and till then the interim arrangement made in this matter by the interim order dated 19.7.1996 passed by the learned Single Judge of this Court on Civil Application No.1765 of 1997 may continue.

4. Application Ex.5 was filed in main Civil Suit on 30.3.1995 below which ex-parte ad.interim injunction in terms of Para : 5(A) was granted whereby the defendants - present appellants were restrained from transferring or selling or alienating the property in question to any one else. After hearing them the learned Judge confirmed the injunction while allowing the application Ex.5 by the impugned order dated 6.1.1996. By the impugned order dated 19.7.1996 passed by the learned Single Judge on Civil Application No.1765 of 1996 the arrangement was made for the maintenance of the respondent No.1 - mother. It was stated at the bar by Shri Chhaya, learned Counsel for the appellants that as per the statement made by him on 19.7.1996 in above Civil Application the appellants found out house for their mother and they are paying the rent for it. They are also paying Rs.250/- p.m. by way of maintenance to their mother.

5. In view of the above, I am of the considered opinion that the trial Court be directed to dispose of the main Civil Suit as early as possible and till then the interim arrangement arrived at between the parties on 19.7.1996 in Civil Application No.1765 of 1996 be continued subject to little modification, namely, that the Appellants No.2 & 3 may pay Rs.500/- p.m. to their mother instead of Rs.250/- as ordered earlier because the appellant No.1 has died and therefore she will get Rs.250/- less and that a period of 5 years has passed by now after passing of the order by the learned Single Judge on Civil Application.

6. Accordingly this Appeal is disposed of with a direction to the learned Civil Judge to dispose of the main Civil Suit as early as possible, preferably on or before 30.9.2002. Till then the present Appellants No.2 & 3 may continue to pay the rent for the house which they have hired for their mother - respondent No.1 and to pay Rs.500/- p.m. instead of Rs.250/- p.m. towards her maintenance.

As the main Appeal is disposed of, Civil Applications No.1765/96 and 8469 of 1996 will not survive. Accordingly both the Civil Applications are disposed of.

sd/-

Date : September 18, 2001 (B.J.Shethna, J.)

sas